

CITATIONS

Cases:

Fleming v. Mohawk Co., No. 583, Oct. T. 1946, decided April 28, 1947-----Page
2

Executive orders:

Executive Order No. 9841, of April 23, 1947 (12 Fed. Reg. 2645)-----2

Executive Order No. 9842, of April 23, 1947 (12 Fed. Reg. 2646)-----3

(1)

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 263

A. H. DOSSETT, d/b/a J. A. DOSSETT LUMBER
COMPANY, PETITIONER

v.

PHILIP B. FLEMING, TEMPORARY CONTROLS
ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH
CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

On August 13, 1946, a so-called "Inspection Requirement" was issued by the Director of the Louisville District Office, Office of Price Administration, requiring petitioner to permit certain O. P. A. representatives named therein to inspect all of his books and records relating to purchases, sales, and transfers of lumber during the period from August 14, 1944, to August 13, 1946, as well as petitioner's inventory of lumber (R. 3-4). Petitioner having refused to permit such inspection, Paul A. Porter, then Price Administrator, on August 17, 1946, filed a petition in the District Court for the Western District of Kentucky, pray-

ing that an order issue requiring him to do so (R. 1-3).¹ On October 7, 1946, the District Court ordered petitioner to make the designated records available for inspection "by any duly accredited investigators of the Louisville District Office of the Office of Price Administration at respondent's place of business" (R. 18-19; see also R. 14-18).

On appeal to the Circuit Court of Appeals for the Sixth Circuit, the order of the district court was affirmed (R. 69-73; reported *sub. nom. Dossett v. Porter*, 161 F. 2d 839). While the case was pending on appeal, on motion of petitioner, Philip B. Fleming was substituted as appellee in place of Paul A. Porter, Fleming, as Administrator of the Office of Temporary Controls, having previously taken over, *inter alia*, the functions of Price Administrator. See *Fleming v. Mohawk Co.*, No. 583, Oct. T. 1946, decided April 28, 1947.

After the entry of the judgment below and prior to the filing of the present petition for certiorari seeking review of that judgment, the functions of the Office of Price Administration were further transferred and distributed in pursuance of the program for their liquidation. By Executive Order No. 9841 of April 23, 1947 (12 Fed. Reg. 2645), which became effective on or about June 1, 1947, the then remaining administrative functions were distributed among the Department of Agriculture, the Department of Com-

¹ No other O. P. A. enforcement proceeding was then or is now pending against petitioner. See R. 54.

merce, and the Office of the Housing Expediter.² Under Executive Order No. 9842 of the same date (12 Fed. Reg. 2646), also effective June 1, 1947, the responsibility and authority over O. P. A. litigation were transferred to the Department of Justice.

Upon the effectuation of the foregoing Executive Orders on or about June 1, 1947, the Office of Price Administration, even as part of the Office of Temporary Controls, was entirely abolished, together with its Administrator, personnel, and all field offices. In these circumstances, the question presented by the petition for a writ of certiorari, if not moot, is certainly highly academic, for the Office of Price Administration no longer exists, and there is no Louisville District Office, the accredited representatives of which were the only persons authorized by the order of the district court to effect compliance with its terms.

Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

✓ PHILIP B. PERLMAN,
Solicitor General.

T. VINCENT QUINN,
✓ *Assistant Attorney General.*

✓ ROBERT S. ERDAHL,
✓ SHELDON E. BERNSTEIN,
Attorneys.

SEPTEMBER 1947.

² By June 1, of course, most of the price control programs had been abandoned, leaving only those with respect to rice and rent.